

## CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Children, Young Persons, and Their Families Act 1989. The amendments implement, in part, the recommendations of the Ministerial Review Team on the principal Act (the "Mason Report") presented to the Government in February 1992, and make various other amendments to the principal Act.

*Clause 1* relates to the Short Title and commencement.

Most of the Bill is to come into force on *1 January 1994*. The exceptions are—

- (a) *Clause 4* (mandatory reporting) which is to come into force on *1 July 1995*;
- (b) *Clause 26 (4) and (5)* (repeal of section 142 of the principal Act, which relates to agreements with controlling authorities of homes registered under the Disabled Persons Community Welfare Act 1975) which is to come into force when Part II of the 1975 Act is repealed pursuant to the Health Reforms (Transitional Provisions) Act 1993;
- (c) *Clauses 31 to 33* (amendments in relation to questioning by enforcement agencies) which are to come into force on Royal assent.

*Clause 2* amends section 2 of the principal Act.

A definition of "convene" is inserted for the purposes of family group conferences. The new definition makes it clear that convening such a conference means to fix the date, time, and place of the conference and notify those details to those entitled to attend.

New definitions of "Cultural Social Services" and "Iwi Social Services" replace the definitions of "Cultural Authority" and "Iwi Authority". The amendments are consequential on the amendments made by *clause 43*.

A new definition of "working day" is substituted. The amendments are consequential on the amendments made by *clause 34*.

Subsection (2) is repealed, and new *subsections (2) to (4)* are inserted.

The existing subsection (2) reads as follows:

"(2) Where proceedings under this Act are contemplated or taken in respect of any child or young person, the age of that child or young person, for the purposes of those proceedings, shall be that child's or young person's age at the date of the alleged offence or incident in respect of which those proceedings are contemplated or taken."

The existing subsection (2) was considered by the Court of Appeal in *R v Edge* in December 1992. The youth justice provisions of the principal Act were held

not to apply to a person who has attained the age of 17 years and in respect of whom proceedings under the principal Act had not been contemplated or taken. The majority held that proceedings were not “contemplated” within the meaning of the subsection until detection and positive action to prosecute the matter was taken, such as consulting with a Youth Justice Co-ordinator or convening a family group conference.

In so far as they relate to the youth justice provisions of the principal Act, the new *subsections* (2) to (4) are intended to—

- (a) Clarify that the age of the child or young person at the time of the offence is the relevant age for the purpose of determining whether there is jurisdiction to take proceedings in respect of the alleged offence, and in which Court proceedings may be taken:
- (b) Provide that inappropriate procedures such as family group conferences are not required once the person attains the age of 18 years, and that prosecutions commenced after a person attains the age of 18 years are to be taken in the adult Court rather than the Youth Court:
- (c) Ensure that section 4 of the Criminal Justice Act 1985 applies in the Youth Court:
- (d) Ensure that section 322 of the principal Act applies to proceedings taken in a District Court.

So far as they relate to the care and protection provisions of the principal Act, the new *subsections* (2) to (4) are intended to clarify—

- (a) That no proceedings can be taken if a person has ceased to be a child or young person:
- (b) That where proceedings have been commenced in respect of a child or young person, he or she will still be treated as a young person after attaining the age of 17 years.

*Clause 3* repeals section 6 of the principal Act, and substitutes a new *section 6*. The existing section 6 reads as follows:

**“6. Welfare and interests of child or young person deciding factor**—Where, in the administration or application of this Part or Part II or Part III or Part IV (other than sections 351 to 360) or Part VII or Part VIII of this Act, any conflict of principles or interests arises, the welfare and interests of the child or young person shall be the deciding factor.”

The Mason Report recommended (at page 12) that the principal Act be amended to provide a clear, unequivocal restatement of the principle that the interests of the child or young person must be the first and paramount consideration. The new section 6 provides as follows:

**“6. Welfare and interests of child or young person paramount**—In all matters relating to the administration or application of this Act (other than Parts IV and V and sections 351 to 360), the welfare and interests of the child or young person shall be the first and paramount consideration, having regard to the principles set out in sections 5 and 13 of this Act.”

*Clause 4* repeals section 15 of the principal Act, and substitutes new *sections 15* to *15B*. The amendments are to come into force on 1 July 1995.

The new sections relate to the reporting of child abuse, and introduce for the first time mandatory reporting for certain groups of persons. Mandatory reporting was recommended in the Mason Report (pages 13 to 18). The provisions are similar to those contained in the Children and Young Persons Bill introduced in 1986 but omitted from that Bill when enacted as the Children, Young Persons, and Their Families Act 1989.

The new *section 15* defines “abused” for the purposes of the new *sections 15A* and *15B*. The term means harmed (whether physically, emotionally, or sexually), ill-treated, abused, neglected, or deprived.

The new *section 15A* requires persons belonging to certain groups of persons to report to a Social Worker or a member of the Police any case of suspected child abuse where the matter arises in the course of carrying out the duties of that person’s occupation or profession. The obligation to report arises where the person has reasonable grounds for believing that the child or young person has been, or is likely to be, abused in a manner that has caused, or is likely to cause, serious harm to that child or young person. The persons on whom the obligation to report suspected child abuse is imposed are as follows:

- (a) Members of the Police:
- (b) Social Workers:
- (c) Registered medical practitioners:
- (d) Registered and enrolled nurses:
- (e) School dental nurses:
- (f) Registered psychologists:
- (g) Persons employed to care for children in an early childhood centre:
- (h) Persons employed to provide home-based care for children, and persons arranging such care:
- (i) Teachers in registered schools:
- (j) Probation officers:
- (k) Persons employed in any Child and Family Support Service, Iwi Social Service, Cultural Social Service, or Community Service, or in any home registered under the Disabled Persons Community Welfare Act 1975:
- (l) Members of the clinical staff of a licensed hospital:
- (m) Persons employed in the specialty of social work by a licensed hospital:
- (n) Lawyers engaged in private practice.

Exceptions from the obligation to report suspected child abuse are made in the case of—

- (a) Lawyers who come across the suspected abuse while acting for any person who is charged with an offence against the child or young person, or for any person who is a party to an application under Part II of the principal Act or the Guardianship Act 1968 or the Guardianship Amendment Act 1991 in respect of the child or young person:
- (b) Persons who come across the suspected abuse while acting as a counsellor under Part II of the Family Proceedings Act 1980.

Section 16 of the principal Act, which provides protection against civil, criminal, and disciplinary proceedings for persons who voluntarily report suspected cases of child abuse, is consequentially amended to extend that protection to persons covered by the obligation to report.

*Clause 5* amends section 16 of the principal Act, which provides protection against civil, criminal, and disciplinary proceedings for persons who report suspected cases of child abuse. The amendment overcomes a doubt that has arisen regarding the scope of the existing provision. A judicial decision suggests that the provision does not protect a person against professional disciplinary action where, in reporting suspected child abuse, the person does not comply with the procedural requirements of the professional body concerned (e.g., an obligation to inform colleagues before making the report). The amendment seeks to remedy that defect by including within the scope of the protection the manner in which the report of child abuse was made.

*Clause 6* amends section 17 of the principal Act by repealing subsection (1), and substituting a new *subsection (1)*. The effect of the amendment is to clarify the

requirement in that section relating to consultation with a Care and Protection Resource Panel where a case of suspected child abuse is being investigated. The amendment makes it clear that such consultation is to take place during, rather than before, the investigation.

*Clause 7* amends section 19 of the principal Act, which relates to the referral of care and protection cases to a Care and Protection Co-ordinator by Courts and persons other than Social Workers or members of the Police. The amendments were recommended in the Mason Report (page 36).

Subsection (1) of section 19 is amended by cross-referencing the term “care and protection” to the grounds specified in section 14 (1) of the principal Act.

A new *subsection (1A)* is inserted which requires a reference to a Care and Protection Co-ordinator to be accompanied by certain specified information, including the reasons for the referral.

*Clause 8* amends section 48 of the principal Act, which empowers a member of the Police to deal with unaccompanied children and young persons. The existing provision applies to children and to young persons under the age of 16 years. The amendment raises that age to 17 years, in line with the recent change to the school leaving age.

*Clause 9* amends section 70 of the principal Act, which provides that, except in certain cases, a family group conference must be held before an application is made for a declaration that a child or young person is in need of care or protection.

The exceptions to that general rule include the situation (set out in paragraph (b) of subsection (2)) where the applicant believes that an interim restraining order, or a custody order under section 78 of the principal Act, or both, should be granted as a matter of urgency. However, that paragraph refers to the interests of the child or young person, when in fact, in the case of an application for a custody order made under section 78 of the principal Act on the ground of a child’s offending, the public interest is one of the determining factors. The amendment harmonises section 70 (2) (b) with section 78.

Subsection (3) of section 70 is also repealed and a new *subsection (3)* substituted. The effect of the amendment is to recognise that family group conferences that relate to a child’s offending should be convened by a Youth Justice Co-ordinator.

*Clause 10* repeals section 78 of the principal Act and the heading above that section, and substitutes a new *section 78* and heading.

The existing section 78 provides for the making of an order relating to the custody of a child or young person pending a determination of an application for a declaration that the child or young person is in need of care or protection. In addition, section 201 of the principal Act provides that an order may be made under section 78 of the principal Act on the adjournment of any proceedings under Part II of the principal Act. However, there is a difference of judicial opinion as to whether or not an order may be made under section 78 on such an adjournment in a case where an application under section 67 of the principal Act has been determined.

The new *section 78* has been recast to overcome this difficulty. The new provision now provides for the making of an order relating to custody pending the determination of any proceedings under Part II of the principal Act. Further, new *subsection (2)* contains a non-exhaustive list of the situations in which an order relating to custody may be made in such circumstances. The list includes those situations currently specified in the existing section 78 (2), as well as several new situations.

*Clause 11* repeals sections 81 and 82 of the principal Act, and substitutes new sections 81 and 82.

The existing sections 81 and 82 relate to the powers of the Director-General of Social Welfare in relation to a child or young person placed in the Director-General's custody pursuant to an order made under section 78 of the principal Act. Under section 81, the Director-General is empowered to place the child or young person with a member of his or her family, whanau, or family group, or in a residence. Under section 82, the child or young person may be returned to the person who previously had care of him or her.

The new sections 81 and 82 extend the application of the existing provisions so that Iwi Social Services and Cultural Social Services (formerly Iwi Authorities and Cultural Authorities) and Child and Family Support Services may exercise, in relation to children and young persons placed in their custody pursuant to an order made under section 78 of the principal Act, the same powers as the Director-General may exercise in relation to children and young persons placed in his or her custody pursuant to such an order.

*Clause 12* repeals section 86 of the principal Act, and substitutes new sections 86 and 86A.

The existing section 86 provides for the making of services orders. It was intended that such orders be made only with the consent of the person that would provide the services. However, some judges have held that subsection (3) of that section authorises the making of an order requiring the Director-General of Social Welfare, without his or her consent, to provide services pursuant to such an order.

The new section 86 expressly recognises that such an order is permitted, but limits the circumstances in which such an order may be made.

The new section 86A provides for the making of an interim services order under section 86 of the principal Act pending the determination of an application for a declaration that a child or young person is in need of care or protection.

*Clause 13* repeals section 91 of the principal Act (which relates to support orders), and substitutes a new section 91. The amendment mirrors, in relation to support orders, the amendment made to section 86 of the principal Act by *clause 12*.

*Clause 14* repeals section 93 of the principal Act, and substitutes a new section 93. The effect of the amendment is to make express reference in the provision to the Director-General of Social Welfare, and is consequential on the amendments made to section 91 of the principal Act by *clause 13*.

*Clause 15* amends section 110 (3) of the principal Act. The effect of the amendment is to prohibit the Court making sole guardianship orders in favour of Iwi Social Services and Cultural Social Services.

*Clause 16* amends section 121 (2) (a) of the principal Act. The amendment is consequential on the amendments made to section 78 of the principal Act by *clause 10*.

*Clause 17: Subclause (1)* amends section 125 (1) (a) of the principal Act. The amendment is consequential on the amendments made to section 78 of the principal Act by *clause 10*.

*Subclause (2)* amends section 125 (1) (d) of the principal Act. The amendment is consequential on the insertion, by *clause 12*, of a new section 86A into the principal Act.

*Clause 18* amends section 126 (k) of the principal Act. The amendment is consequential on the insertion, by *clause 12*, of a new section 86A into the principal Act.

*Clause 19* inserts a new *section 126A* into the principal Act. The new section provides that where an application is made under section 125 of the principal Act (which relates to the variation or discharge of certain orders), the Court, at any stage of the proceedings, may direct a Care and Protection Co-ordinator to convene a family group conference to consider such matters relating to the child or young person as the Court directs.

*Clause 20* amends section 127 of the principal Act, which relates to the orders that a Court may make on an application under section 125 for the variation or discharge of certain orders. The amendments make it clear that on such an application, the Court may make any order under section 83 (1) or section 84 (1) of the principal Act in addition to the order that is the subject of the application, whether or not the Court makes any other order in relation to that order.

*Clause 21* amends section 128 of the principal Act by adding a new *subsection (4)*.

Section 128 requires that where a Court is proposing to make certain orders under the principal Act in relation to a child or young person, it must, before making the order, obtain a plan in relation to the child or young person.

In some situations, an adequate plan may already have been formulated by a family group conference. The new *subsection (4)* provides that in this situation, the Court may treat that plan as having been obtained under section 128 (1) of the principal Act. The plan is deemed to have been prepared by the Director-General of Social Welfare.

*Clause 22* amends section 134 of the principal Act, which relates to the fixing of a date for the review of a plan prepared pursuant to section 128.

The amendment relates to the identity of the person that is to carry out the review. At present, that person is the person that prepared the plan. This has been found to be impracticable in some cases, and the amendment provides more flexibility by empowering the Court to direct who is to review the plan. If the Court does not make such a direction, the person that prepared the plan is deemed to have been directed to review it. The Court is also empowered to amend any such direction.

*Clause 23* amends section 135 of the principal Act, which relates to the review of a plan prepared pursuant to section 128 of the principal Act.

*Subclause (1)* repeals subsection (1) of section 135, and substitutes a new *subsection (1)*. The amendment is consequential on the amendments made to section 134 of the principal Act by *clause 22*.

*Subclause (2)* adds new *subsections (4)* and *(5)* to section 135. The new subsections provide for the convening of a family group conference for the purposes of reviewing a plan.

*Clause 24* amends section 138 of the principal Act. The amendment is consequential on the amendments made to section 134 by *clause 22*.

*Clause 25* amends section 141 of the principal Act, which relates to long term agreements for the care of severely disabled children and young persons.

Subsection (1) of section 141 restricts the application of the provision to children and young persons who are so mentally or physically disabled that suitable care for them can be provided only if they are placed in institutional care. The reference to "institutional care" has been interpreted as requiring that such care must be provided in an institutional setting. The amendment in *subclause (1)* makes it clear that such care may also be provided by an organisation or body approved under section 396 of the principal Act (as substituted by *clause 43*), which relates to approval of Iwi Social Services, Cultural Social Services, and Child and Family Support Services.

*Subclause (2)* repeals subsection (4), and substitutes a new *subsection (4)*. The amendment relates to the situation where a person in whose care it is proposed to place a child or young person pursuant to an agreement under section 141 proposes to place the child or young person in the charge of some other person or organisation. In those circumstances, an agreement cannot be made unless a registered medical practitioner certifies that the proposed caregiver has appropriate facilities and adequate staffing to supervise the placement and to ensure that adequate and appropriate care is provided.

*Clause 26* amends section 142 of the principal Act, which provides for children and young persons who are disabled to be placed in the care of a controlling authority of a home registered under the Disabled Persons Community Welfare Act 1975.

The amendment provides that such a controlling authority may place the child or young person in the charge of any person whom the controlling authority considers suitable to provide for that child's or young person's care, control, and upbringing.

The clause also provides for the repeal of section 142, to come into force at the same time as the repeal of Part II of the Disabled Persons Community Welfare Act 1975. Provision is made for the repeal of Part II of that Act on a date appointed by the Governor-General pursuant to the Health Reforms (Transitional Provisions) Act 1993, being a date after 30 June 1994.

*Clause 27* amends section 159 of the principal Act, which provides for the appointment of a barrister or solicitor to represent a child or young person who is the subject of proceedings under Part II of the principal Act.

The amendment relates to the situation where a Court is considering a review of a plan under section 135 or section 460 of the principal Act. Such proceedings may be carried out without a formal hearing, and in these circumstances the appointment of a lawyer to represent the child or young person may be unnecessary. The amendment therefore gives the Court a discretion to dispense with such an appointment if satisfied that it would serve no useful purpose.

*Clause 28* amends section 179 of the principal Act, which specifies the persons who may carry out medical, psychiatric, or psychological examinations of children and young persons in respect of whom proceedings under Part II of the principal Act are in train. The amendment extends the category of persons who may carry out psychological examinations of such children and young persons to include persons entitled to practise overseas.

*Clause 29* amends section 186 of the principal Act, which provides for Social Workers to provide reports to Courts in respect of various matters. The amendment extends the definition of the term "Social Worker" for the purposes of the section to include persons employed in the specialty of social work by Child and Family Support Services, Iwi Social Services, or Cultural Social Services. The amendment was recommended in the Mason Report (pages 69 to 70).

*Clause 30* amends section 201 (3) (a) of the principal Act. The amendment is consequential on the amendments made to section 78 of the principal Act by *clause 10*.

*Clause 31* amends section 215 of the principal Act, which provides that before an enforcement officer questions a child or young person in relation to the commission or possible commission of an offence by the child or young person, the officer must inform the child or young person of certain rights.

The Mason Report (at pages 146 to 159) examined the provision and recommended that it be amended to allow an enforcement officer to make

“general enquiries” before the explanation of rights must be given, and that the term “general enquiries” be defined in the Act.

The amendment does not adopt the Mason Report’s recommendations, but attempts to deal with the issue in another way. The existing provision imposes an obligation to advise of rights when an enforcement officer intends to question a child or young person “in relation to the commission or possible commission of an offence by that child or young person”. Under the amendment, the obligation is to arise only where the enforcement officer has reasonable grounds to suspect the child or young person of having committed an offence, or where the questioning is intended to obtain an admission of an offence. In addition, the amendment provides that where, during the course of questioning, an enforcement officer forms the view that there are reasonable grounds to suspect the child or young person of having committed an offence, the officer is to give the required explanation of rights before continuing with the questioning.

The amendment also makes clear that, subject to the express provisions as to the advising of rights, nothing in section 215 affects the ability of an enforcement officer to question a child or young person in relation to the commission or possible commission of an offence.

*Clause 32* amends section 222 of the principal Act, which provides that a child or young person who is being questioned by an enforcement officer or who has been arrested or is to be charged with an offence may, before making a statement, nominate a person in order to consult with them. The amendment makes explicit the role of that nominated person. It is—

- (a) To take reasonable steps to ensure that the child or young person understands the statement of rights explained to him or her under section 221 (2) (a) of the principal Act; and
- (b) To support the child or young person—
  - (i) Before and during any questioning; and
  - (ii) If the child or young person agrees to make or give any statement, during the making or giving of the statement.

*Clause 33* amends section 231 of the principal Act, which provides that a child or young person who is at the office of an enforcement agency for questioning in relation to any offence or following arrest may nominate a person to be informed of the situation and who may visit the child or young person at that office. The amendment makes explicit the role of that nominated person. It is the same as the role of the person nominated under section 222 (as amended by *clause 32*).

*Clause 34* repeals section 248 of the principal Act, and substitutes a new section. Section 248 sets out certain circumstances in which a family group conference need not be held in respect of an offence alleged or proved to have been committed by a young person.

At present, subsection (1) of section 248 provides that a Youth Justice Co-ordinator may waive a family group conference where—

- (a) The relevant offence was committed before the date on which the young person was dealt with by a Court for another offence that carries the same or a greater maximum penalty; and
- (b) The young person is subject to a full-time custodial sentence or a community-based sentence or is subject to certain orders made by a Youth Court; and
- (c) The Youth Justice Co-ordinator is satisfied that the conference would serve no useful purpose and the family or whanau or family group of the young person agree with that view.

The Mason Report (at pages 38 to 40) examined the provision for waiving a family group conference and concluded that it was too restrictive.

The amendment relaxes the effect of section 248 in 2 ways.

First, the conditions currently expressed in paragraphs (a) and (b) of subsection (1) of section 248 and which must both be satisfied before a conference may be waived are to be treated as alternatives.

Secondly, *subsection (3)* of the new section sets out further circumstances in which a conference may be waived. These are where—

- (a) A conference held not more than 30 working days earlier had the opportunity to consider how the offence should be dealt with; and
- (b) A Youth Justice Co-ordinator is of the view that the holding of a further conference would serve no useful purpose and is satisfied that the family, whanau, or family group of the young person and the persons who would be entitled to attend the conference agree with that view.

Before forming that view, the Co-ordinator is required—

- (a) To consult with the family, whanau, or family group of the young person and the persons who would be entitled to attend the conference; and
- (b) To have regard to—
  - (i) The response of the young person to any decisions, recommendations, or plans made or formulated by the previous conference; and
  - (ii) The seriousness and extent of the new offending.

Before waiving a family group conference under either *subsection (1)* or *subsection (3)*, the Co-ordinator is also required to consider whether or not a conference is necessary for the purpose of considering the question of reparation.

*Clause 35* amends section 249 of the principal Act, which imposes time limits on the convening and completion of family group conferences. Subsection (6) of that section is repealed and a new *subsection (6)* substituted. The amendment is consequential on the insertion, by *clause 2*, in section 2 of the principal Act of a definition of “convene” in relation to family group conferences. The new *subsection (6)* repeats the requirement that conferences held in cases where the young person is detained pending the determination of a charge must ordinarily be completed within 7 days, and adds a requirement that other conferences must ordinarily be completed within 1 month.

*Clause 36* repeals section 250 of the principal Act, and substitutes a new *section 250*. The existing provision requires a Youth Justice Co-ordinator to consult with members of a child’s or young person’s family, whanau, or family group in relation to the holding of a family group conference. The amendment repeats that requirement, and adds a requirement to consult with—

- (a) Any victim of the offence; and
- (b) The applicant or intended applicant for a declaration that the child is in need of care or protection or, as the case requires, the informant or intended informant in other proceedings—

in relation to the date, time, and place of the conference.

The amendment was recommended in the Mason Report (page 163).

*Clause 37* amends section 251 of the principal Act, which sets out the persons who are entitled to attend a family group conference. The amendment gives the victim of the offence to which the conference relates, if that person attends the conference in person, the right to bring a reasonable number of support persons. The Youth Justice Co-ordinator convening the conference may exclude any such support person in certain circumstances, and it is made clear that no such support person is a member of the conference and is not entitled to participate

in discussions and deliberations of the family members present at the conference.

The amendment was recommended in the Mason Report (page 163).

*Clause 38* amends section 293 of the principal Act. That section provides, in part, that where a young person is ordered by a Youth Court to pay any sum by way of a fine or compensation, the young person may not be imprisoned for failure to comply with the order. The amendment provides that corrective training may not be imposed either. A related amendment is made to section 88 of the Summary Proceedings Act 1957 by *clause 45*.

*Clause 39* amends section 368 of the principal Act, which sets out the grounds for placement in secure care.

At present, one of the grounds is that placement is necessary to prevent the child or young person absconding from the residence where—

- (a) The child or young person has, on one or more previous occasions, absconded from a residence or from Police custody; and
- (b) There is a real likelihood that the child or young person will abscond from the residence; and
- (c) The physical, mental, or emotional wellbeing of the child or young person is likely to be harmed if the child or young person so absconds.

The amendment has 2 effects. First, the ground will be established if any 2 of the present conditions are satisfied.

Second, only previous absconding that has taken place within the preceding 6 months will be relevant under the first condition.

The second ground for placement specified in section 368 is unaffected. That ground is that placement in secure care is necessary to prevent the child or young person from behaving in a manner likely to cause physical harm to that child or young person or to any other person.

*Clause 40* amends section 376 of the principal Act, which provides that where a child or young person is detained in secure care pursuant to section 367 of the principal Act, a Court may grant an approval for the continued detention of that child or young person in secure care.

At present, such an approval may in all cases be granted for a maximum period of 14 days.

The amendment extends the period for which such an approval may be granted in the case of children and young persons who are charged with or convicted of an offence and are detained in a residence pending trial for, or sentence for, the offence, or for the purposes of a psychiatric examination.

In the case of children and young persons in this category, approval for detention in secure care may be granted for up to 28 days (new *subsection (5)* of section 376).

Approval for detention in secure care for longer than the normal period of up to 14 days may be granted only if the Judge is satisfied that, because of the length of time for which the child or young person is likely to be detained in the custody of the Director-General of Social Welfare, the public interest requires detention in secure care for an extended period.

*Clause 41* amends section 377 of the principal Act, which provides for the renewal of approvals granted under section 376 of the principal Act for detention in secure care. The amendment is consequential on the amendments made to section 376 by *clause 40*.

*Clause 42* inserts a new *section 383A* into the principal Act. The new provision makes it clear that any authority conferred by or under the principal Act for the detention of a child or young person in secure care does not extend any authority to detain that child or young person in that residence.

*Clause 43* repeals section 396 of the principal Act, and substitutes a new *section 396*.

The effect of the amendment is to rename Iwi Authorities and Cultural Authorities as Iwi Social Services and Cultural Social Services respectively.

*Subclause (2)* is a transitional provision.

*Clause 44* makes amendments to the principal Act that are consequential on *clauses 15* and *43*.

*Clause 45* amends section 88 of the Summary Proceedings Act 1957. That provision sets out the action that may be taken where a fine (which includes certain other sums payable) is payable by any person and the person fails to pay. Such action includes the possibility of imprisonment or corrective training. The provision makes no exception for young persons.

Under the principal Act, where a Youth Court imposes a fine on a young person, the young person may not be imprisoned for failure to pay (section 293). *Clause 38* extends that restriction to corrective training.

The clause aligns section 88 of the Summary Proceedings Act 1957 with section 293 of the principal Act (as proposed to be amended by *clause 38*) in the case of young persons who incur fines for non-imprisonable traffic offences. Neither imprisonment nor corrective training may be imposed for failure to pay the fine.

*Clause 46* amends section 4 (1) of the Coroners Act 1988. The amendment is consequential on the amendments made by *clause 43*.

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Hon. Jenny Shipley

## CHILDREN, YOUNG PERSONS, AND THEIR FAMILIES AMENDMENT

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A BILL INTITULED

**An Act to amend the Children, Young Persons, and Their Families Act 1989**

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Children, Young Persons, and Their Families Amendment Act 1993, and shall be read together with and deemed part of the Children, Young Persons, and Their Families Act 1989\* (hereinafter referred to as the principal Act).

(2) Except as provided by sections 4 (4), 26 (6), 31 (3), 32 (2), and 33 (2) of this Act, this Act shall come into force on the 1st day of January 1994.

**2. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “Community Service”, the following definition:

“‘Convene’, in relation to a family group conference, means to take the appropriate steps under sections 20 and 25 of this Act (in the case of a family group conference authorised or required under Part II of this Act) or under sections 247 and 253 of this Act (in the case of a conference authorised or required under Part IV of this Act) in order to cause the conference to meet; and ‘reconvene’ has a corresponding meaning.”

(2) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “Cultural Authority”, and substituting the following definition:

“‘Cultural Social Service’ means any incorporated body approved by the Director-General as a Cultural Social Service pursuant to section 396 (2) of this Act.”

(3) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “Iwi Authority”, and substituting the following definition:

5           “‘Iwi Social Service’ means any incorporated body approved by the Director-General as an Iwi Social Service pursuant to **section 396 (1)** of this Act.”

(4) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “working day”, and substituting the following definition:

10           “‘Working day’ means any day of the week other than—  
          “(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

15           “(b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year; and

          “(c) The day observed as the anniversary day of the appropriate province; and

20           “(d) In relation to any requirement to file a document in, or supply a document to, a Family Court or a Youth Court, any other day that is observed by the Court as a holiday.”

(5) Section 2 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

25           “(2) Where any proceedings are being considered or have been taken in respect of any offence allegedly committed by a person when that person was a child or young person, the age of that person at the date of the alleged offence shall be that person’s age for the purpose of—

30           “(a) Whether there is jurisdiction to take any proceedings in respect of that alleged offence, and, subject to **paragraph (d)** of this subsection, which Court has jurisdiction in respect of proceedings that may be taken; and

35           “(b) The proceedings taken,—  
but nothing in this subsection shall—

40           “(c) Require or authorise any family group conference in respect of the alleged offence before or at any stage of the proceedings if, at the time the conference would otherwise be required, that person has attained the age of 18 years; or

“(d) Require any proceedings to be taken in a Youth Court if, at the time the information is laid, that person has attained the age of 18 years; or

“(e) Derogate from the provisions of section 4 of the Criminal Justice Act 1985 (which shall apply in respect of proceedings under Part IV of this Act as if the proving of a charge was a conviction).” 5

“(3) Where any information is laid in a District Court pursuant to **subsection (2) (d)** of this section, section 322 of this Act shall apply, with all necessary modifications, to the proceedings. 10

“(4) Where any proceedings have been taken under Part II of this Act in respect of any alleged incident, the age of any child or young person at the date of the alleged incident shall be that person’s age for the purpose of the proceedings.” 15

**3. Welfare and interests of child or young person paramount**—The principal Act is hereby amended by repealing section 6, and substituting the following section:

“6. In all matters relating to the administration or application of this Act (other than Parts IV and V and sections 351 to 360), the welfare and interests of the child or young person shall be the first and paramount consideration, having regard to the principles set out in sections 5 and 13 of this Act.” 20

**4. New sections substituted**—(1) The principal Act is hereby amended by repealing section 15, and substituting the following sections: 25

“15. **Definition of child abuse**—For the purposes of sections 15A and 15B of this Act, the term ‘abused’ means harmed (whether physically, emotionally, or sexually), ill-treated, abused, neglected, or deprived. 30

“15A. **Reporting of child abuse**—Any person who believes that any child or young person has been, or is likely to be, abused may report the matter to a Social Worker or a member of the Police.

“15B. **Mandatory reporting of child abuse**—(1) This section applies to any person who is— 35

“(a) A member of the Police:

“(b) A Social Worker:

“(c) A registered medical practitioner:

“(d) A person registered or enrolled as a nurse under the Nurses Act 1977: 40

- “(e) A school dental nurse:  
“(f) A registered psychologist:  
5 “(g) Any person employed to care for children in an early  
childhood centre within the meaning of section 308  
of the Education Act 1989:  
“(h) A person employed to provide home-based care in  
accordance with the Education (Home-Based Care)  
Order 1992 or who is a care arranger within the  
10 meaning of section 308 of the Education Act 1989 or  
who is employed by a care arranger to arrange  
home-based care:  
“(i) A teacher employed in a registered school within the  
meaning of section 2 (1) of the Education Act 1989:  
“(j) A probation officer:  
15 “(k) Employed in any Child and Family Support Service, Iwi  
Social Service, Cultural Social Service, or  
Community Service, or in any home registered  
under the Disabled Persons Community Welfare Act  
1975:  
20 “(l) A member of the clinical staff of a licensed hospital as  
defined in section 118 of the Hospitals Act 1957:  
“(m) Employed in the specialty of social work by a licensed  
hospital as defined in section 118 of the Hospitals  
Act 1957:  
25 “(n) A barrister or solicitor engaged in private practice.  
“(2) Notwithstanding any enactment or rule of law, every  
person to whom this section applies who, in the course of  
carrying out the duties of that person’s occupation or  
30 profession, has reasonable grounds for believing that any child  
or young person has been, or is likely to be, abused in a manner  
that has caused, or is likely to cause, serious harm to that child  
or young person, shall report the matter to a Social Worker or a  
member of the Police.  
“(3) Every member of the Police or Social Worker who is  
35 required to report any matter under **subsection (2)** of this section  
shall,—  
“(a) In the case of a Social Worker, make the report to  
another Social Worker or to a member of the Police:  
“(b) In the case of a member of the Police, make the report  
40 to another member of the Police or to a Social  
Worker.  
“(4) Nothing in **subsection (2)** of this section applies to a  
barrister or solicitor who has reasonable grounds for believing  
that a child or young person has been, or is likely to be abused,

where that belief arises by reason of that barrister or solicitor acting in a professional capacity for any person who is—

“(a) Charged with an offence against the child or young person; or

“(b) A party to any application under—

“(i) This Part of this Act; or

“(ii) The Guardianship Act 1968; or

“(iii) The Guardianship Amendment Act 1991.

“(5) Nothing in **subsection (2)** of this section applies to any person who has reasonable grounds for believing that a child or young person has been, or is likely to be abused, where that belief arises by reason of that person acting as a counsellor under Part II of the Family Proceedings Act 1980.”

(2) Section 16 of the principal Act (as amended by **section 5** of this Act) is hereby consequentially amended by omitting the expression “section 15”, and substituting the expression “**section 15A or section 15B**”.

(3) Section 17 of the principal Act (as amended by **section 6** of this Act) is hereby consequentially amended by omitting the expression “section 15” wherever it occurs, and substituting in each case the expression “**section 15A or section 15B**”.

(4) This section shall come into force on the **1st day of July 1995**.

**5. Protection of person reporting ill-treatment or neglect of child or young person**—Section 16 of the principal Act is hereby amended by inserting, after the word “supply”, the words “, or the manner of the disclosure or supply,”.

**6. Investigation of report of ill-treatment or neglect of child or young person**—Section 17 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Where any Social Worker or member of the Police receives a report pursuant to **section 15** of this Act relating to a child or young person, that Social Worker or member of the Police shall, as soon as practicable after receiving the report, undertake or arrange for the undertaking of such investigation as may be necessary or desirable into the matters contained in the report and shall, during the course of such investigation, consult with a Care and Protection Resource Panel in relation to the investigation.”

**7. Referral of care or protection cases to Care and Protection Co-ordinator by other persons or by Court—**

5 (1) Section 19 (1) of the principal Act is hereby amended by inserting, after the word “protection”, the words “on one or more of the grounds specified in section 14 (1) of this Act”.

(2) Section 19 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Every referral pursuant to subsection (1) of this section shall be accompanied by—

10 “(a) A statement of the reasons for believing that the child or young person to whom the referral relates is in need of care or protection; and

“(b) Particulars sufficient to identify any person, body, or organisation that might be contacted to substantiate that belief; and

15 “(c) Any recommendation as to the course of action the Care and Protection Co-ordinator might take in respect of the referral.”

**8. Unaccompanied children and young persons—**

20 Section 48 (3) of the principal Act is hereby amended by omitting the expression “16”, and substituting the expression “17”.

**9. No application to be made unless family group conference has been held—**(1) Section 70 (2) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraphs:

25 “(b) The applicant believes that the interests of the child or young person in respect of whom the application is made require that an interim restraining order be granted as a matter of urgency, and an application for such an order is made at the same time as the application; or

30 “(ba) An application for a custody order under section 78 of this Act is made at the same time as the application, and the applicant believes,—

35 “(i) Where the application is made on the ground specified in section 14 (1) (e) of this Act,—

40 “(A) That it is not possible to make suitable alternative arrangements for the custody of the child in respect of whom the application is made pending the determination of the application; or

“(B) That it is in the public interest that the child be held in custody pending the determination of the application:

“(ii) In any other case, that the interests of the child or young person in respect of whom the application is made require that such a custody order be granted as a matter of urgency; or”.

(2) Section 70 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Where, pursuant to any of paragraphs (a) to (ba) of subsection (2) of this section, an application for a declaration under section 67 of this Act is made without a family group conference having been held, the Registrar shall forthwith refer the application to,—

“(a) In the case of an application made on the ground specified in section 14 (1) (e) of this Act, a Youth Justice Co-ordinator; or

“(b) In any other case, a Care and Protection Co-ordinator— for the purposes of convening a family group conference.”

**10. New heading and section substituted**—The principal Act is hereby amended by repealing section 78 and the heading above that section, and substituting the following heading and section:

*“Custody of Child or Young Person Pending Determination of Proceedings*

**“78. Custody of child or young person pending determination of proceedings**—(1) In any proceedings in a Court under Part II of this Act in relation to a child or young person, the Court may, on the application of any party to the proceedings, or a barrister or solicitor representing the child or young person, or of its own motion, make an order relating to the custody of the child or young person pending the determination of the proceedings.

“(2) Without limiting the generality of subsection (1) of this section, the Court may make an order under that subsection in relation to a child or young person in the following cases:

“(a) Where the child or young person has been placed in the custody of the Director-General pursuant to section 39 or section 40 or section 42 of this Act and is brought before the Court pursuant to section 45 of this Act:

- “(b) Where the Court is satisfied that the child or young person is in need of care or protection for the period of the order:
- 5 “(c) In the case of an application for a declaration under section 67 of this Act on the ground specified in section 14 (1) (e) of this Act, where—
- “(i) It is not possible to make suitable alternative arrangements for the custody of the child pending the determination of the application; or
- 10 “(ii) It is in the public interest that the child be held in custody pending the determination of the application:
- “(d) Where the Court has made a declaration under section 67 of this Act and has adjourned the proceedings pending their disposition:
- 15 “(e) Where an application for a variation or discharge of any order (or the variation or discharge of any condition of any order) is made to the Court under section 125 of this Act, at any time before such application is finally disposed of:
- 20 “(f) Where a report is furnished to the Court pursuant to section 135 of this Act, at any time before the Court has completed its consideration of the report and accompanying revised plan under section 137 of this Act.
- 25 “(3) An order under **subsection (1)** of this section may be made on such terms and conditions as the Court thinks fit.”

30 **11. New sections substituted**—The principal Act is hereby amended by repealing sections 81 and 82, and substituting the following sections:

35 **“81. Placement of child or young person under order made under section 78**—(1) Where, pursuant to an order made under section 78 of this Act, a child or young person is placed in the custody of any person (being the Director-General or an Iwi Social Service or a Cultural Social Service or the Director of a Child and Family Support Service), that order is sufficient authority for that person to place the child or young person—

- 40 “(a) With a member of the child’s or young person’s family, whanau, or family group:
- “(b) Where the child or young person is placed in the custody of the Director-General, in a residence.

“(2) Subject to **subsection (1)** of this section, the person in whose custody a child or young person is so placed may, from time to time, during the currency of the order, change the placement of the child or young person.

Cf. 1974, No. 72, s. 43 (8)

5

“**82. Child or young person may be returned to person who previously had care**—(1) This section applies where a child or young person is placed in the custody of the Director-General, an Iwi Social Service, a Cultural Social Service, or the Director of a Child and Family Support Service pursuant to an order made under section 78 of this Act. 10

“(2) Subject to **subsection (5)** of this section, where this section applies, the person in whose custody the child or young person is placed may, at any time before the order expires or is discharged, if that person considers it appropriate to do so, return the child or young person to the custody of the parent or guardian or other person who had the care of the child or young person immediately before the order was made. 15

“(3) The person so returning the child or young person may impose such conditions relating to the supervision of the child or young person as that person thinks fit. 20

“(4) Subject to **subsection (5)** of this section, where,—

“(a) Pursuant to **subsection (2)** of this section, a child or young person is returned to the custody of another person; and 25

“(b) At any time before the order made under section 78 of this Act expires or is discharged, the person so returning the child or young person considers that it is no longer desirable in the interests of the child or young person that he or she be in the custody of that other person,— 30

the person may direct that other person to return the child or young person to the custody of that person.

“(5) No person shall—

“(a) Return a child or young person to the custody of any other person pursuant to **subsection (2)** of this section; or 35

“(b) Issue a direction under **subsection (4)** of this section in relation to a child or young person— without first consulting with the barrister or solicitor representing that child or young person. 40

“(6) Where a person gives a direction under **subsection (4)** of this section,—

“(a) Any Social Worker acting under the specific or general authority of that person may—

5 “(i) Remove the child or young person to whom the direction relates, using such force as is reasonably necessary for the purpose; and

“(ii) Place the child or young person with such person, or (where the person giving the direction is the Director-General) in such residence, as the person giving the direction thinks fit:

10 “(b) Subsections (2) and (3) of section 105 of this Act shall apply, so far as applicable and with all necessary modifications, in relation to the removal of the child or young person pursuant to the direction.”

15 **12. New sections substituted**—The principal Act is hereby amended by repealing section 86, and substituting the following sections:

“**86. Services orders**—(1) Where the Court makes a declaration under section 67 of this Act in relation to a child or young person, it may—

20 “(a) Make an order directing the Director-General or any other person or organisation named in the order to provide such services and assistance as may be specified in the order for such period and on such terms and conditions as may be specified to a parent or guardian or other person having the care of the child or young person:

25 “(b) Make an order directing the Director-General or any other person or organisation named in the order to provide such services and assistance as may be specified in the order for such period and on such terms and conditions as may be specified to the child or young person.

30 “(2) The Court shall not make an order under **subsection (1)** of this section unless the Director-General (where the order is to be directed to the Director-General) or the person or organisation that would be required to provide services and assistance pursuant to the order (in any other case)—

“(a) Is given notice of the Court’s intention to consider making the order; and

40 “(b) Is given an opportunity to appear and be heard by the Court before the order is made; and

“(c) Subject to **subsection (3)** of this section, consents to the making of the order.

“(3) An order directing the Director-General to provide services and assistance may be made under this section without the consent of the Director-General, but only if the Court is satisfied— 5

“(a) That the circumstances of the particular case are exceptional; and

“(b) That requiring the Director-General to provide those services and assistance is not clearly impracticable; 10  
and

“(c) That the child or young person, in respect of whom the Court proposes to make an order under this section, is in the care of a person or organisation clearly consistently with the principles set out in sections 5, 6, and 13 of this Act. 15

“86A. **Interim services orders**—Where an application is made to the Court for a declaration under section 67 of this Act in relation to a child or young person, the Court may, on application by the applicant, or a barrister or solicitor representing the child or young person, or of its own motion, make such an order as it is empowered to make under **section 86** of this Act pending the determination of the application.” 20

**13. Support orders**—The principal Act is hereby amended by repealing section 91, and substituting the following section: 25

“91. (1) Where the Court makes a declaration under section 67 of this Act in relation to a child or young person, it may make an order directing the Director-General or any other person or organisation named in the order to provide support to that child or young person for such period (not exceeding 12 months) as is specified in the order. 30

“(2) The Court shall not make an order under **subsection (1)** of this section unless the Director-General (where the order is to be directed to the Director-General) or the person or organisation that would be required to provide support pursuant to the order (in any other case)— 35

“(a) Is given notice of the Court’s intention to consider making the order; and

“(b) Is given an opportunity to appear and be heard by the Court before the order is made; and 40

“(c) Subject to **subsection (3)** of this section, consents to the making of the order.

“(3) An order directing the Director-General to provide support may be made under this section without the consent of the Director-General, but only if the Court is satisfied—

5 “(a) That the circumstances of the particular case are exceptional; and

“(b) That requiring the Director-General to provide those services and assistance is not clearly impracticable; and

10 “(c) That the child or young person, in respect of whom the Court proposes to make an order under this section, is in the care of a person or organisation clearly consistently with the principles set out in sections 5, 6, and 13 of this Act.”

15 **14. Duty to provide support**—The principal Act is hereby amended by repealing section 93, and substituting the following section:

“93. Where an order is made under section 91 or section 92 of this Act in relation to a child or young person, it is the duty of the Director-General (where the order is directed to the Director-General) or the person or organisation directed to provide support pursuant to the order (in any other case)—

20 “(a) To monitor the standard of care, protection, and control being provided to, or exercised over, that child or young person; and

25 “(b) To provide, or co-ordinate the provision of, such services and resources (including financial services and resources), whether from the community or otherwise, as will ensure that appropriate care, protection, and control are provided to, or exercised over, that child or young person.”

30 **15. Guardianship orders**—Section 110 (3) of the principal Act is hereby amended by inserting, after the word “appointing”, the words “an Iwi Social Service or a Cultural Social Service or”.

35 **16. Court may make orders for access and exercise of other rights by parents and other persons**—Section 121 (2) (a) of the principal Act is hereby amended by omitting the words “an application”, and substituting the words “any proceedings”.

**17. Application for variation or discharge of orders made under this Part of this Act**—(1) Section 125 (1) (a) of the principal Act is hereby amended by omitting the words “an application for a declaration under section 67 of this Act”, and substituting the words “any proceedings”.

5

(2) Section 125 (1) of the principal Act is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Any services order or interim services order made under section 86 or section 86A of this Act:”.

10

**18. Persons who may apply for variation or discharge of order**—Section 126 of the principal Act is hereby amended by repealing paragraph (k), and substituting the following paragraph:

“(k) In respect of any services order or interim services order made under section 86 or section 86A of this Act, any person or organisation required to provide services or assistance pursuant to the order:”.

15

**19. Court may direct holding of family group conference to consider application**—The principal Act is hereby amended by inserting, after section 126, the following section:

20

“126A. (1) Where an application is made under section 125 of this Act, the Court, at any stage of the proceedings, may direct a Care and Protection Co-ordinator to convene a family group conference for the purpose of considering such matters relating to the child or young person as the Court directs, and may adjourn the hearing of the application until the conference has been held.

25

“(2) The provisions of sections 20 to 36 of this Act shall apply with all necessary modifications with respect to the convening of a family group conference for the purposes of this section.”

30

**20. Court may vary or discharge order**—(1) Section 127 (1) of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

35

“(ca) Make any order referred to in section 83 (1) or section 84 (1) of this Act in addition to the order (whether or not the Court exercises any other power specified in paragraph (a) or any of paragraphs (d) to (g) of this subsection in relation to the order):”.

40

(2) Section 127 (2) of the principal Act is hereby amended by inserting, after paragraph (d), the following paragraph:

5 “(da) Make any order referred to in section 83 (1) or section 84 (1) of this Act in addition to the order (whether or not the Court exercises any other power specified in paragraph (a) or paragraph (b) or any of paragraphs (e) to (i) of this subsection in relation to the order):”.

10 (3) Section 127 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

15 “(3) Where the Court makes any order under this section, the Court may, where it considers it necessary or desirable to do so, make such order under section 134 of this Act as it thinks fit with respect to any plan or revised plan in force concerning the child or young person.”

**21. Court to obtain and consider plan for child or young person before making certain orders**—Section 128 of the principal Act is hereby amended by adding the following subsection:

20 “(4) Notwithstanding anything in subsection (1) of this section, where—

“(a) The Court proposes to make an order in respect of a child or young person; and

25 “(b) But for this subsection, the Court would be required, pursuant to subsection (1) of this section, to obtain a plan in respect of the order; and

“(c) The making of the order would be in accordance with a decision, recommendation, or plan made or formulated by a family group conference; and

30 “(d) That conference has already formulated, in respect of the child or young person, a plan that complies with the requirements of section 130 of this Act,—

35 the Court may treat that plan as a plan obtained by the Court pursuant to subsection (1) of this section, and that subsection and the other provisions of this Act that relate to plans obtained pursuant to that subsection shall apply accordingly as if the plan had been prepared by the Director-General.”

**22. Court to set date for review of plan**—(1) Section 134 of the principal Act is hereby amended by adding the following subsections:

“(4) On fixing a date pursuant to subsection (1) of this section, the Court may also direct who is to review the plan pursuant to section 135 of this Act. If the Court does not make such a direction, the person who prepared the plan shall be deemed to have been directed pursuant to this subsection to review the plan. 5

“(5) The Court may at any time, on the application of any party to the proceedings, or a barrister or solicitor representing the child or young person, or of its own motion, amend any direction made or deemed to have been made under **subsection (4)** of this section, or revoke any such direction and substitute another direction.” 10

(2) In respect of every plan prepared pursuant to section 128 of this Act before the date of the commencement of this section and that has not been reviewed in accordance with section 135 of this Act before that date, the person who prepared that plan shall be deemed to have been directed pursuant to section 134 of this Act (as amended by **subsection (1)** of this section) to review that plan. 15

**23. Review of plan**—(1) Section 135 (1) of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection: 20

“(1) Subject to section 127 (3) of this Act, the person who is directed, pursuant to section 134 of this Act, to review a plan prepared under section 128 of this Act in respect of a child or young person shall, not later than the date fixed pursuant to section 134 of this Act for the review of that plan, review that plan and furnish to the Court a report setting out the results of that review, together with a revised plan in respect of that child or young person.” 25 30

(2) Section 135 of the principal Act is hereby amended by adding the following subsections:

“(4) On the request of the person required to review a plan under subsection (1) of this section, a Care and Protection Co-ordinator may convene a family group conference for the purpose of reviewing the plan. 35

“(5) The provisions of sections 20 to 36 of this Act shall apply with all necessary modifications with respect to the convening of a family group conference for the purposes of **subsection (4)** of this section.” 40

**24. Court to set date for further review of plan**—Section 138 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

5 “(2) Section 134 of the principal Act shall apply, with all necessary modifications, with respect to—

“(a) The fixing of a date for the review of a revised plan; and

“ (b) The person who is to review a revised plan.”

**25. Agreements for extended care of severely disabled children and young persons**—(1) Section 141 (1) of the principal Act is hereby amended by omitting the words “institutional care”, and substituting the words “the care of an organisation or body approved under section 396 of this Act”.

10 (2) Section 141 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

15 “(4) No agreement may be made under subsection (2) of this section providing for the placement of any child or young person in the care of any person (in this subsection referred to as the proposed caregiver) unless a registered medical practitioner (not being a person employed by the proposed caregiver) certifies,—

20 “(a) That the proposed caregiver has appropriate facilities and adequate staffing to care for the child or young person; or

25 “(b) Where, pursuant to section 362 of this Act, the proposed caregiver intends to place the child or young person in the charge of some other person or organisation, that the proposed caregiver has appropriate facilities and adequate staffing to supervise the placement and to ensure that adequate and appropriate care is provided to the child or young person.”

**26. Agreements with controlling authorities of homes registered under Disabled Persons Community Welfare Act 1975**—(1) Section 142 (2) of the principal Act is hereby amended by omitting the words “the controlling authority of a home registered under the Disabled Persons Community Welfare Act 1975”, and substituting the words “a controlling authority”.

35 (2) Section 142 (3) of the principal Act is hereby amended by omitting the word “person” where it appears for the second time, and substituting the words “controlling authority”.

40

(3) Section 142 of the principal Act is hereby amended by adding the following subsections:

“(4) Where, pursuant to an agreement made under subsection (2) of this section, a child or young person is placed in the care of a controlling authority, that controlling authority may place the child or young person in the charge of any person whom the controlling authority considers suitable to provide for that child’s or young person’s care, control, and upbringing.”

“(5) Section 363 of this Act shall, with all necessary modifications, apply in respect of any placement made pursuant to **subsection (4)** of this section as if it were a placement made pursuant to section 362 of this Act.”

“(6) In this section, the term “controlling authority” means a controlling authority of a home registered under the Disabled Persons Community Welfare Act 1975.”

(4) Section 142 of the principal Act is hereby repealed.

(5) The principal Act is hereby consequentially amended in the manner indicated in the **First Schedule** to this Act.

(6) **Subsections (4) and (5)** of this section, and the **First Schedule** to this Act, shall come into force on the date appointed by the Governor-General, by Order in Council made under section 26 (3) of the Health Reforms (Transitional Provisions) Act 1993, for the repeal of Part II of the Disabled Persons Community Welfare Act 1975, being a date after the **30th day of June 1994**.

**27. Appointment of barrister or solicitor to represent child or young person**—(1) Section 159 (1) of the principal Act is hereby amended by inserting, immediately before the word “Where”, the words “Subject to **subsection (1A)** of this section.”

(2) Section 159 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) The Court is not required to appoint a barrister or solicitor to represent the child or young person in any proceedings (other than proceedings on an application made under section 125 of this Act) initiated by the furnishing to the Court of a plan and report under section 135 or section 460 of this Act if the Court is of the view that such an appointment would serve no useful purpose.”

**28. Further provisions relating to medical, psychiatric, and psychological examinations**—Section 179 of the

principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

5 “(3) Every psychological examination carried out under subsection (1) or subsection (2) of section 178 of this Act shall be carried out by—

“(a) A registered medical practitioner holding a psychiatric appointment or being registered on the register of specialists in the speciality of psychological medicine or psychiatry; or

10 “(b) A registered psychologist; or

“(c) A person appointed by the Court for the purpose, being a person whom the Court is satisfied—

15 “(i) Is entitled to practice as a psychologist, or in the speciality of psychological medicine or psychiatry, in that person’s country of permanent residence; and

20 “(ii) Has qualifications that, in the view of the appropriate registering body in New Zealand, are at least equivalent to those required of a person referred to in paragraph (a) or paragraph (b) of this subsection.”

**29. Report by Social Worker**—Section 186 of the principal Act is hereby amended by adding the following subsection:

25 “(5) In this section, the term ‘Social Worker’ includes a person employed in the speciality of social work by the Director of a Child and Family Support Service, or by an Iwi Social Service or a Cultural Social Service, who consents to make a report under this section.”

30 **30. Adjournments**—Section 201 (3) (a) of the principal Act is hereby amended by omitting the words “an application”, and substituting the words “any proceedings”.

35 **31. Child or young person to be informed of rights before questioned by enforcement officer**—(1) Section 215 (1) of the principal Act is hereby amended by omitting the words “in relation to the commission or possible commission of an offence by that child or young person”, and substituting the words “whom there are reasonable grounds to suspect of having committed an offence, or before asking any child or young person any question intended to obtain an admission of  
40 an offence”.

(2) Section 215 of the principal Act is hereby amended by adding the following subsections:

“(3) Without limiting **subsection (1)** of this section, where, during the course of questioning a child or young person, an enforcement officer forms the view that there are reasonable grounds to suspect the child or young person of having committed an offence, the enforcement officer shall, before continuing the questioning, give the explanation required by that subsection. 5

“(4) Subject to **subsections (1) and (3)** of this section, nothing in this section affects the ability of any enforcement officer to question a child or young person in relation to the commission or possible commission of an offence.” 10

(3) This section shall come into force on the day on which this Act receives the Royal assent. 15

**32. Persons who may be nominated for purposes of section 221 (2) (b) or (c)**—(1) Section 222 of the principal Act is hereby amended by adding the following subsection:

“(4) It is the duty of any person nominated pursuant to subsection (1) of this section— 20

“(a) To take reasonable steps to ensure that the child or young person understands the matters explained to the child or young person under section 221 (2) (a) of this Act; and

“(b) To support the child or young person— 25

“(i) Before and during any questioning; and

“(ii) If the child or young person agrees to make or give any statement, during the making or giving of the statement.”

(2) This section shall come into force on the day on which this Act receives the Royal assent. 30

**33. Persons who may be nominated for purposes of section 229 (1) (a)**—(1) Section 231 of the principal Act is hereby amended by adding the following subsection:

“(4) It is the duty of any person nominated pursuant to subsection (1) of this section— 35

“(a) To take reasonable steps to ensure that the child or young person understands the matters explained to the child or young person under section 221 (2) (a) of this Act; and

“(b) To support the child or young person— 40

“(i) Before and during any questioning; and

“(ii) If the child or young person agrees to make or give any statement, during the making or giving of the statement.”

5 (2) This section shall come into force on the day on which this Act receives the Royal assent.

**34. Family group conference not required in certain cases**—The principal Act is hereby amended by repealing section 248, and substituting the following section:

10 “248. (1) Nothing in section 245 (1) (c) or section 246 (b) or section 247 (b) or (d) or (e) or section 281 of this Act requires a family group conference to be held in respect of any offence alleged or proved to have been committed by a young person if—

15 “(a) The offence is alleged or proved to have been committed on a date that is earlier than the date on which—

“(i) The young person was convicted and sentenced in the High Court or a District Court; or

20 “(ii) A Youth Court made an order under section 283 of this Act in respect of that young person— for any other offence (not being an offence the maximum penalty for which is less than the maximum penalty that may be imposed in respect of the first-mentioned offence); or

25 “(b) The young person is subject to a full-time custodial sentence or a community-based sentence (as those terms are defined in section 2 (1) of the Criminal Justice Act 1985), or to any order made under any of paragraphs (k) to (o) of section 283 of this Act,— and, subject to **subsection (5)** of this section, in either case, a  
30 Youth Justice Co-ordinator is of the view that the holding of a family group conference would serve no useful purpose, and the family or whanau or family group of the young person agree with that view.

“(2) Where—

35 “(a) A family group conference has been convened pursuant to section 247 of this Act in relation to any offence alleged or proved to have been committed by a child or young person; and

40 “(b) Before the family group conference has made any decision, recommendation, or plan pursuant to section 260 of this Act in relation to that offence, that child or young person is alleged or proven to have committed any other offence (being an offence

in respect of which a family group conference would be required to be held pursuant to section 247 of this Act),—

the family group conference may make in respect of the latter offence any decision, recommendation, or plan that it is empowered to make under section 260 of this Act, and it shall not be necessary to convene a separate family group conference in relation to that latter offence. 5

“(3) Nothing in section 245 (1) (c) or section 246 (b) or section 247 (b) or (d) or (e) or section 281 of this Act requires a family group conference to be held in respect of any offence alleged or proved to have been committed by a young person if— 10

“(a) The requirement to convene a conference under any of those sections arose within 30 working days of the holding of a previous family group conference— 15

“(i) That was convened under this Part of this Act in respect of any other offence; and

“(ii) That had the opportunity to consider how that offence should be dealt with; and

“(b) Subject to **subsections (4) and (5)** of this section, a Youth Justice Co-ordinator— 20

“(i) Is of the view that the holding of a family group conference would serve no useful purpose; and

“(ii) Is satisfied that— 25

“(A) The family, whanau, or family group of the young person; and

“(B) Each of the persons who would be entitled to attend a family group conference under any of paragraphs (d) to (n) of section 251 of this Act— 30

agree with that view.

“(4) Before forming a view as to whether or not a family group conference would serve a useful purpose under **subsection (3)** of this section, the Youth Justice Co-ordinator shall— 35

“(a) Consult with—

“(i) The family, whanau, or family group of the young person concerned; and

“(ii) The persons who would be entitled to attend the family group conference pursuant to any of paragraphs (d) to (n) of section 251 of this Act; and 40

“(b) Have regard to—

“(i) The response of the young person to any decisions, recommendations, or plans made or

formulated by the previous family group conference; and

5 “(ii) The seriousness and extent of the offending alleged or proved to have been committed by the young person and that gives rise to the requirement to hold a family group conference.

10 “(5) Before forming a view as to whether or not a family group conference would serve a useful purpose under **subsection (1)** or **subsection (3)** of this section, the Youth Justice Co-ordinator shall consider whether a family group conference is necessary for the purpose of considering whether the young person should be required to make reparation for any offence.”

15 **35. Time limits for convening of family group conferences**—Section 249 of the principal Act is hereby amended by repealing subsection (6), and substituting the following subsection:

“(6) Unless there are special reasons why a longer period is required,—

20 “(a) Every family group conference to which subsection (3) or subsection (4) of this section applies shall be completed within 7 days after it is convened:

“(b) Every other family group conference shall be completed within one month after it is convened.”

25 **36. Consultation on convening of family group conference**—The principal Act is hereby amended by repealing section 250, and substituting the following section:

30 “250. (1) Every Youth Justice Co-ordinator shall, before convening a family group conference pursuant to this Part of this Act in respect of a child or young person, make all reasonable endeavours to consult with the child’s or young person’s family, whanau, or family group in relation to—

“(a) The date on which, and the time and place at which, the conference is to be held; and

“(b) The persons who should attend the conference; and

35 “(c) The procedure to be adopted at the conference,—  
and, subject to **subsection (2)** of this section and to sections 249 and 251 of this Act, shall, so far as it is practicable and consistent with the principles of this Act, give effect to the wishes of the child’s or young person’s family, whanau, or  
40 family group in relation to those matters.

“(2) The Youth Justice Co-ordinator shall also make all reasonable endeavours to consult with—

“(a) Any victim of the offence or alleged offence to which the conference relates; and

“(b) Either,—

“(i) In the case of a conference required to be convened under section 18 (3) of this Act, the applicant or intended applicant for a declaration under section 67 of this Act in relation to the child to whom the conference relates; or

“(ii) In the case of any other proceedings or proposed proceedings for the offence or alleged offence to which the conference relates, the informant or intended informant in those proceedings—

in relation to the date on which, and the time and place at which, the conference is to be held, and, in convening the conference, shall take into account, in relation to those matters, the views of the person or persons consulted.”

**37. Persons entitled to attend family group conference**—Section 251 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) Subject to **subsection (3)** of this section, where, pursuant to subsection (1) (f) of this section, any victim of an offence or alleged offence attends a family group conference in person and not by a representative, that person may be accompanied by any reasonable number of persons (being members of his or her family, whanau, or family group or any other persons) who attend the conference for the purpose of providing support to that victim.

“(3) The Youth Justice Co-ordinator convening the conference may exclude any such supporter from attendance at the conference if that Co-ordinator is of the opinion that the supporter’s attendance would not be in the interests of the child or young person to whom the conference relates, or would be undesirable for any other reason.

“(4) A person who attends a family group conference pursuant to **subsection (2)** of this section shall not be a member of the conference.

“(5) No person who attends a family group conference pursuant to any of paragraphs (c) to (n) (other than paragraph (k)) of subsection (1) of this section or pursuant to **subsection (2)** of this section is entitled to be present during any discussions or deliberations held among the members of the family, whanau,

or family group of the child or young person in respect of whom the conference is held, unless those members request that person to attend.”

5       **38. Effect of order imposing fine or requiring payment of compensation or restitution or forfeiture of property**—Section 293 (b) of the principal Act is hereby amended by inserting, after the word “imprisonment”, the words “or corrective training”.

10       **39. Grounds for placement in secure care**—The principal Act is hereby amended by repealing section 368, and substituting the following section:

“368. (1) A child or young person may be placed in secure care in a residence if, and only if, such placement is necessary—

15       “(a) To prevent the child or young person absconding from the residence where any 2 of the conditions specified in subsection (2) of this section apply; or

20       “(b) To prevent the child or young person from behaving in a manner likely to cause physical harm to that child or young person or to any other person.

“ (2) The conditions referred to in subsection (1) (a) of this section are—

25       “(a) The child or young person has, on one or more occasions within the preceding 6 months, absconded from a residence or from Police custody;

“(b) There is a real likelihood that the child or young person will abscond from the residence:

30       “(c) The physical, mental, or emotional wellbeing of the child or young person is likely to be harmed if the child or young person absconds from the residence.”

**40. Court may authorise continued detention in secure care**—(1) Section 376 (4) of the principal Act is hereby amended by inserting, immediately before the words “An approval”, the words “Subject to subsection (5) of this section,”.

35       (2) Section 376 of the principal Act is hereby amended by adding the following subsection:

40       “(5) Notwithstanding subsection (4) of this section, where an application under section 371 of this Act relates to a child or young person who is remanded in the custody of the Director-General pursuant to subsection (4) or subsection (5A) of section 142 of the Criminal Justice Act 1985, the Court may grant an

approval under subsection (1) of this section for such period (being more than 14 days but not more than 28 days) as the Court shall specify, in any case where the Court is satisfied that, because of the length of time for which the child or young person is likely to be detained in the Director-General's custody, the public interest so requires. Any approval so granted shall be valid for the specified period commencing on the day on which it is granted." 5

**41. Renewal of approval for continued detention in secure care**—Section 377 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection: 10

“(5) Subsections (4) and (5) of section 376 of this Act shall apply with all necessary modifications with respect to the duration of the validity of a renewal granted under subsection (1) of this section as if that renewal were an approval granted under subsection (1) of that section.” 15

**42. Lapse of authority for detention in secure care**—The principal Act is hereby amended by inserting, after section 383, the following section: 20

“383A. Any authority conferred by or under any of sections 367 to 383 of this Act for the detention of a child or young person in secure care in a residence shall, unless it sooner expires, continue only for so long as the authority to detain that child or young person in that residence continues.” 25

**43. Approval of Iwi Social Services, Cultural Social Services, and Child and Family Support Services**—(1) The principal Act is hereby amended by repealing section 396 and the heading above that section, and substituting the following heading and section: 30

*“Iwi Social Services, Cultural Social Services, and Child and Family Support Services”*

“396. (1) The Director-General may, from time to time, on application made to the Director-General, approve any incorporated body (being a body established by an iwi) as an Iwi Social Service for the purposes of this Act. 35

“(2) The Director-General may, from time to time, on application made to the Director-General, approve any incorporated body (being a body established by one or more

cultural groups (not being iwi) within New Zealand) as a Cultural Social Service for the purposes of this Act.

5 “(3) The Director-General may, from time to time, on application made to the Director-General, approve any organisation or body (including a children’s home), whether incorporated or unincorporated, as a Child and Family Support Service for the purposes of this Act.

10 “(4) The Director-General may grant an approval under this section subject to such conditions as the Director-General thinks fit.”

(2) Every approval granted under the former section 396 of the principal Act (as repealed by subsection (1) of this section) as an Iwi Authority or a Cultural Authority or a Child and Family Support Service and in force immediately before the commencement of this section shall be deemed to be an approval granted under section 396 of the principal Act (as substituted by subsection (1) of this section),—

15 (a) In the case of an Iwi Authority, as an Iwi Social Service:  
20 (b) In the case of a Cultural Authority, as a Cultural Social Service:

(c) In the case of a Child and Family Support Service, as a Child and Family Support Service—  
on the same conditions (if any) as applied to that approval under the former section 396 of the principal Act (as so repealed) immediately before the commencement of this section.

**44. Amendments consequential on sections 15 and 43**—The principal Act is hereby consequentially amended in the manner indicated in the **Second** Schedule to this Act.

30 **45. Amendment to Summary Proceedings Act 1957**—

(1) Section 88 of the Summary Proceedings Act 1957 (as substituted by section 14 of the Summary Proceedings Amendment Act 1987 and amended by section 14 of the Summary Proceedings Amendment Act 1993) is hereby amended by inserting in subsection (3), immediately before the words “The District Court Judge”, the words “Subject to subsection (3AA) of this section,”.

35 (2) Section 88 of the Summary Proceedings Act 1957 (as so substituted and amended) is hereby amended by inserting, after subsection (3), the following subsection:

40 “(3AA) Notwithstanding anything in subsection (3) of this section, where—

“(a) The fine was imposed in respect of a traffic offence (as defined in section 2 (1) of the Children, Young Persons, and Their Families Act 1989) not punishable by imprisonment; and

“(b) At the date of the commission of the offence, the defendant was a young person within the meaning of that Act,— 5

neither a period of imprisonment nor a sentence of corrective training shall be imposed under subsection (3) of this section on the defendant in respect of the fine.” 10

(3) Without limiting section 4 of the Criminal Justice Act 1985 or section 25 (g) of the New Zealand Bill of Rights Act 1990, section 88 of the Summary Proceedings Act 1957 (as amended by this section) shall apply—

(a) In respect of the enforcement of any fine (as defined in section 79 of that Act) where default in the payment of the fine is made on or after the commencement of this section: 15

(b) Where default in the payment of any fine (as so defined) is made before the date of the commencement of this section and no action has been taken under section 88 of that Act before that date. 20

(4) Section 88 of the Summary Proceedings Act 1957 shall apply as if this section had not been passed in any case where action in respect of any fine (as so defined) has commenced under that section before the date of the commencement of this section but has not been completed before that date; except that where any enforcement action under Part III of that Act in respect of the fine is completed and further enforcement action under that Part is to be taken, the further enforcement action shall be taken under that Part as amended by this section. 25 30

**46. Amendment to Coroners Act 1988**—Section 4 (1) of the Coroners Act 1988 is hereby amended by omitting from subparagraph (i) of paragraph (f) (as substituted by section 449 of the principal Act) the words “Iwi Authority or a Cultural Authority”, and substituting the words “Iwi Social Service or a Cultural Social Service”. 35

**SCHEDULES**

**FIRST SCHEDULE**

**Section 26 (5)**

**AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON REPEAL OF  
SECTION 142**

Provision of Principal Act	Amendment
Section 14 (2) (b) (i) . .	By omitting the words “or section 142 of this Act”, and substituting the words “of this Act or pursuant to an agreement made under section 142 of this Act before the repeal of that section by <b>section 26 (4)</b> of the Children, Young Persons, and Their Families Amendment Act 1993”.
Section 15B (1) (k)	By omitting the words “or in any home registered under the Disabled Persons Community Welfare Act 1975”, and substituting the words “or in any home or premises in which 5 or more disabled children or young persons are receiving care”.
Section 143 . . . .	By omitting the words “or section 142”.
Section 144 (1) . . . .	By omitting the words “or section 142”.
Section 144 (2) . . . .	By omitting the words “to whom section 142 of this Act applies”.
Section 144 (3) . . . .	By omitting the words “or section 142”.
Section 145 (1) . . . .	By omitting the words “or section 142”.
Section 145 (2) . . . .	By omitting from paragraphs (a) and (b) the words “or section 142”.
Section 146 . . . .	By omitting from subsections (1) and (2) the words “or section 142”.
Section 147 (2) . . . .	By omitting the words “or section 142”. By omitting the words “or the controlling authority of a home registered under the Disabled Persons Community Welfare Act 1975”.
Section 148 . . . .	By omitting the words “or section 142”.
Section 149 . . . .	By omitting the words “or section 142”.
Section 389 (a) (i) . . . .	By omitting the words “or section 142”.

## Section 44

## SECOND SCHEDULE

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43

Provision of Principal Act	Amendment
Section 32 (1) ..	By repealing paragraph (e), and substituting the following paragraph: “(e) Where there is an appropriate Iwi Social Service or Cultural Social Service with respect to the child or young person, that Social Service; and”.
Section 79 (1) ..	By repealing paragraphs (b) and (c), and substituting the following paragraphs: “(b) An Iwi Social Service: “(c) A Cultural Social Service:”.
Section 101 (1) ..	By repealing paragraphs (b) and (c), and substituting the following paragraphs: “(b) An Iwi Social Service: “(c) A Cultural Social Service:”.
Section 103 .. ..	By omitting the words “Iwi Authority or a Cultural Authority”, and substituting the words “Iwi Social Service or a Cultural Social Service”.
Section 104 (2) ..	By repealing paragraph (b), and substituting the following paragraph: “(b) Where the order places the child or young person in the custody of an Iwi Social Service or a Cultural Social Service, with such person as the Convener of the Social Service directs:”.
Section 106 .. ..	By repealing this section, and substituting the following section: <p style="margin-left: 2em;"><b>“106. Living arrangements where child or young person placed in custody of Iwi Social Service, etc.—</b></p> <p style="margin-left: 2em;">(1) Where the Court makes an order under section 101 of this Act placing a child or young person in the custody of an Iwi Social Service or a Cultural Social Service or the Director of a Child and Family Support Service, the Convener of the Social Service or the Director of that Support Service, as the case may require,—</p> <p style="margin-left: 4em;">“(a) May from time to time direct that the child or young person be removed from the person with whom or the residence in which that child or young</p>

SECOND SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43—*continued*

Provision of Principal Act	Amendment
Section 106— <i>continued</i>	<p>person was placed pursuant to section 104 of this Act and placed with some other person or in some other residence; and</p> <p>“(b) May request any Social Worker or any member of the Police to assist in carrying out any direction given under paragraph (a) of this subsection, and any Social Worker or member of the Police so assisting may use such force as is reasonably necessary for that purpose.</p> <p>“(2) For the purposes of assisting in the carrying out of any direction given under subsection (1) (a) of this section, any Social Worker or member of the Police may exercise the powers conferred by section 105 (2) of this Act, and the provisions of subsections (2) and (3) of section 105 of this Act shall apply accordingly with all necessary modifications.”</p>
Section 110 (1) ..	<p>By repealing paragraphs (b) and (c), and substituting the following paragraphs:</p> <p>“(b) An Iwi Social Service:</p> <p>“(c) A Cultural Social Service:”.</p>
Section 113 .. ..	<p>By omitting the words “or an Iwi Authority or a Cultural Authority”.</p>
Section 119 .. ..	<p>By repealing this section, and substituting the following section:</p> <p>“119. <b>Guardianship of child or young person on death of person appointed as guardian under this Act</b>—On the death of any person (being a person referred to in subsection (1) (e) of section 110 of this Act) appointed the guardian of a child or young person pursuant to an order made under that section, and who at the time of that person’s death was the sole guardian of the child or young person, guardianship</p>

SECOND SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43—*continued*

Provision of Principal Act	Amendment
Section 119— <i>continued</i>	of the child or young person shall vest in the Director-General as if the Director-General had been appointed the sole guardian of the child or young person.”
Section 126 . . . .	By repealing paragraph (i), and substituting the following paragraph: “(i) Any Iwi Social Service or Cultural Social Service:”.
Section 139 . . . .	By repealing this section, and substituting the following section: “139. <b>Agreements for temporary care of children and young persons by Director-General, Iwi Social Services, etc.</b> —(1) Subject to this section, any parent or guardian or other person having the care of a child or young person who is temporarily unable or unwilling to care for the child or young person may,— “(a) With the agreement of the Director-General, place the child or young person in the care of the Director-General for a period not exceeding 28 days; or “(b) With the agreement of an Iwi Social Service or a Cultural Social Service, place the child or young person in the care of that Social Service for a period not exceeding 28 days; or “(c) With the agreement of the Director of a Child and Family Support Service, place the child or young person in the care of the Director for a period not exceeding 28 days. “(2) If the parent or guardian or other person having the care of the child or young person is, or will be, unable to resume the care of the child or young person at the end of the period during which the child or young person is in the care of any person pursuant to subsection

SECOND SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43—*continued*

Provision of Principal Act	Amendment
Section 139— <i>continued</i>	(1) of this section, the period may, with the agreement of that person, be extended for one further period of up to 28 days."
Section 140 . . . .	<p>By repealing this section, and substituting the following section:</p> <p><b>"140. Agreements for extended care of children and young persons by Director-General, Iwi Social Service, etc.—</b>(1) Subject to this section and to sections 143 to 145 and section 147 of this Act, where every person who is a parent or guardian or person having the care of a child or young person agrees to do so, those persons may,—</p> <p>"(a) With the agreement of the Director-General, place the child or young person in the care of the Director-General for a period of more than 28 days; or</p> <p>"(b) With the agreement of an Iwi Social Service or a Cultural Social Service, place the child or young person in the care of that Social Service for a period of more than 28 days; or</p> <p>"(c) With the agreement of the Director of a Child and Family Support Service, place the child or young person in the care of the Director for a period of more than 28 days.</p> <p>"(2) No agreement may be made under subsection (1) of this section providing for the placement of any child or young person in the care of any person for any period that exceeds,—</p> <p>"(a) In the case of a child who is under 7 years of age, 6 months:</p> <p>"(b) In the case of any other child or any young person, 12 months."</p>

SECOND SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43—*continued*

Provision of Principal Act	Amendment
Section 141 (2) ..	By repealing paragraph (a), and substituting the following paragraph: “(a) With the agreement of an Iwi Social Service or a Cultural Social Service, place the child or young person in the care of that Social Service; or”.
Section 147 .. ..	By omitting the words “Iwi Authority or a Cultural Authority” in both places where they appear, and substituting in each case the words “Iwi Social Service or a Cultural Social Service”.
Section 152 (1) ..	By repealing paragraph (d), and substituting the following paragraph: “(d) If the child or young person is in the custody or under the guardianship of an Iwi Social Service or a Cultural Social Service, that Social Service:”.
Section 166 (1) ..	By repealing paragraph (g), and substituting the following paragraph: “(g) Where there is an appropriate Iwi Social Service or Cultural Social Service with respect to the child or young person, a representative of that Social Service:”.
Section 186 (2) ..	By omitting from paragraphs (a) and (b) the words “Iwi Authority or a Cultural Authority”, and substituting in each case the words “Iwi Social Service or a Cultural Social Service”.
Section 234 (c) ..	By repealing subparagraph (ii), and substituting the following subparagraph: “(ii) With the agreement of the child or young person, any Iwi Social Service or Cultural Social Service; or”.
Section 238 (1) (d) ..	By omitting the words “Iwi Authority, or a Cultural Authority”, and substituting the words “Iwi Social Service, or a Cultural Social Service”.
Section 239 (1) ..	By omitting the words “Iwi Authority or a Cultural Authority”, and substituting the words “Iwi Social Service or a Cultural Social Service”.

SECOND SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43—*continued*

Provision of Principal Act	Amendment
Section 251 (1) ..	By repealing paragraph (i), and substituting the following paragraph: “(i) Where an Iwi Social Service or a Cultural Social Service or the Director of a Child and Family Support Service— “(i) Is a guardian of the child or young person; or “(ii) Is entitled to custody of the child or young person pursuant to the Guardianship Act 1968 or under any order or agreement made under Part II of this Act,— a representative of that Social Service or of the Director:”
Section 265 (1) ..	By repealing paragraph (h), and substituting the following paragraph: “(h) Where there is an appropriate Iwi Social Service or Cultural Social Service with respect to the child or young person, that Social Service.”
Section 361 .. ..	By omitting from paragraphs (a), (c), (e), (g), and (i) the words “Iwi Authority or a Cultural Authority”, and substituting in each case the words “Iwi Social Service or a Cultural Social Service”. By omitting from paragraph (d) the words “or an Iwi Authority or a Cultural Authority”.
Section 362 .. ..	By omitting the words “Iwi Authority or a Cultural Authority”, and substituting the words “Iwi Social Service or a Cultural Social Service.” By omitting the words “that Authority” in both places where they appear, and substituting in each case the words “that Social Service”.
Section 363 .. ..	By omitting from subsections (2) and (3) the words “Iwi Authority or a Cultural Authority”, and substituting in each case the words “Iwi Social Service or a Cultural Social Service”.

SECOND SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43—*continued*

Provision of Principal Act	Amendment
Section 390 . . . .	<p>By omitting from subsection (1) the words “Iwi Authority or a Cultural Authority”, and substituting the words “Iwi Social Service or a Cultural Social Service”.</p> <p>By repealing paragraph (b) of subsection (2), and substituting the following paragraph:  “(b) If the Director-General or, as the case requires, the Iwi Social Service or the Cultural Social Service or the Director of the Child and Family Support Service so directs, by the young person jointly with a person nominated by the Director-General or, as the case requires, that Social Service or that Director.”</p> <p>By omitting from subsection (3) the words “Iwi Authority or the Cultural Authority”, and substituting the words “Iwi Social Service or the Cultural Social Service”.</p> <p>By omitting from subsection (3) the words “that Authority”, and substituting the words “that Social Service”.</p>
Section 391 (1) . . . .	By omitting the words “Iwi Authority or a Cultural Authority”, and substituting the words “Iwi Social Service or a Cultural Social Service”.
Section 394 . . . .	<p>By repealing this section, and substituting the following section:</p> <p><b>“394. Limitation on tortious liability of Director-General and other persons having care of child or young person—</b>(1) Subject to subsections (2) and (3) of this section, no liability in tort shall attach to—</p> <p>“(a) The Director-General, or any employee of the Department; or</p> <p>“(b) Any Iwi Social Service or Cultural Social Service or Child and Family Support Service, or any member or employee of any</p>

SECOND SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43—*continued*

Provision of Principal Act	Amendment
Section 394— <i>continued</i>	<p>such Social Service or Support Service; or</p> <p>“(c) Any person or organisation in whose charge a child or young person is placed pursuant to section 362 of this Act, or any member or employee of any such person or organisation,— in respect of an act or omission on the part of a child or young person to whom this section applies.</p> <p>“(2) Nothing in subsection (1) of this section applies if the act or omission—</p> <p>“(a) Occurs while the child or young person is acting as the employee or agent of any person, organisation, Social Service, or Support Service referred to in any of paragraphs (a) to (c) of subsection (1) of this section, or of any member or employee of any such person, organisation, Social Service, or Support Service; and</p> <p>“(b) Is within the scope of the child’s or young person’s employment or authority as such.</p> <p>“(3) Nothing in subsection (1) of this section exempts any person or organisation referred to in paragraph (c) of that subsection from any liability in tort for any loss resulting from the use, care, or control of a motor vehicle, if that motor vehicle is in the possession or under the control of a child or young person with the authority of that person or organisation.</p> <p>“(4) In subsection (3) of this section, the term “motor vehicle” has the same meaning as in the Transport Act 1962.”</p>
Section 395 (a)	<p>.. By omitting the words “Iwi Authority or a Cultural Authority”, and substituting the words “Iwi Social Service or a Cultural Social Service”.</p>

SECOND SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43—*continued*

Provision of Principal Act	Amendment
Section 395 (a)— <i>continued</i>	By omitting the words “that Authority”, and substituting the words “that Social Service”.
Heading to Part VIII ..	By omitting the heading, and substituting the heading “PROVISIONS RELATING TO IWI SOCIAL SERVICES, CULTURAL SOCIAL SERVICES, CHILD AND FAMILY SUPPORT SERVICES, AND COMMUNITY SERVICES”.
Section 397 .. ..	By omitting the words “Iwi Authority or a Cultural Authority”, and substituting the words “Iwi Social Service or a Cultural Social Service”. By omitting the words “Iwi Authority or, as the case requires, a Cultural Authority”, and substituting the words “Iwi Social Service or, as the case requires, a Cultural Social Service”.
Section 399 .. . .	By repealing this section, and substituting the following section: <p style="margin-left: 2em;">“399. <b>Revocation of approval</b>—</p> <p style="margin-left: 2em;">(1) Subject to this section, where the Director-General is satisfied, in relation to any Iwi Social Service or Cultural Social Service or Child and Family Support Service, that proper standards of care are not being provided for the children and young persons who are in the custody or under the guardianship of that Social Service or Support Service, the Director-General may exercise either or both of the following powers:</p> <p style="margin-left: 4em;">“(a) If the Director-General considers that suspension of the approval of the Iwi Social Service or Cultural Social Service or Child and Family Support Service is desirable in the public interest, the Director-General may suspend the approval of that Social Service or Support Service:</p> <p style="margin-left: 4em;">“(b) After giving the Social Service or Support Service not less than</p>

SECOND SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43—*continued*

Provision of Principal Act	Amendment
Section 399— <i>continued</i>	<p>60 days' notice of the date on which the Director-General will consider the matter, the Director-General may revoke the approval of that Social Service or Support Service.</p> <p>“(2) Where, under subsection (1) of this section, the Director-General revokes or suspends the approval of an Iwi Social Service or a Cultural Social Service or a Child and Family Support Service, the Director-General shall—</p> <p>“(a) Give notice of the suspension or revocation to the Iwi Social Service or Cultural Social Service or Child and Family Support Service and the reasons for it; and</p> <p>“(b) Give notice of the suspension or revocation in the <i>Gazette</i>.</p> <p>“(3) Every Iwi Social Service or Cultural Social Service or Child and Family Support Service to whom a notice is given under subsection (1) (b) of this section is entitled to make submissions to the Director-General, and the Director-General shall have regard to those submissions before deciding whether or not to revoke the approval of that Social Service or Support Service.”</p>
Section 400 .. ..	<p>By repealing this section, and substituting the following section:</p> <p>“400. <b>Assessment of Iwi Social Services, etc.</b>—(1) Any Social Worker or other officer of the Department authorised by the Director-General may, from time to time, carry out an assessment of an Iwi Social Service or a Cultural Social Service or a Child and Family Support Service for the purpose of assessing—</p> <p>“(a) The operation of that Social Service or Support Service:</p>

SECOND SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43—*continued*

Provision of Principal Act	Amendment
Section 400— <i>continued</i>	<p>“(b) The standards of care being provided for the children and young persons who are in the care or custody or under the guardianship of that Social Service or Support Service:</p> <p>“(c) The practices and procedures applying in respect of the Social Service or Support Service.</p> <p>“(2) Every Social Worker or officer of the Department who carries out an assessment of an Iwi Social Service or a Cultural Social Service or a Child and Family Support Service under subsection (1) of this section shall prepare a report on that assessment for the Director-General, and a copy of that report shall be supplied by the Director-General to that Social Service or Support Service.”</p>
Section 401 . . . .	<p>By repealing this section, and substituting the following section:</p> <p><b>“401. Powers of persons carrying out assessment of Iwi Social Service, etc.—</b>(1) For the purpose of carrying out an assessment of an Iwi Social Service or a Cultural Social Service or a Child and Family Support Service under section 400 of this Act, a Social Worker or other officer of the Department authorised by the Director-General may—</p> <p>“(a) At any reasonable time enter any premises that are occupied by the Social Service or Support Service and that provide residential accommodation for children or young persons who are in the care or custody or under the guardianship of the Social Service or Support Service and inspect any part of those premises:</p>

SECOND SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43—*continued*

Provision of Principal Act	Amendment
Section 401— <i>continued</i>	<p>“(b) Interview—</p> <p>    “(i) The Convener of the Social Service or, as the case requires, the Director of the Support Service:</p> <p>    “(ii) Any officer or employee of the Social Service or Support Service:</p> <p>“(c) Communicate with any person having the care of any child or young person who is in the care or custody or under the guardianship of that Social Service or Support Service and with that child or young person:</p> <p>“(d) Examine any documents or records that are held by that Social Service or Support Service and that relate to any child or young person who is in the care or custody or under the guardianship of the Social Service or Support Service.</p> <p>“(2) Every Social Worker or officer shall give reasonable notice of that person’s intention to enter any premises pursuant to subsection (1) (a) of this section to the Social Service or Support Service concerned.</p> <p>“(3) Every Social Worker or officer shall, on entering any premises under this section, and when requested at any subsequent time, produce—</p> <p>    “(a) Evidence of that person’s authority to enter the premises; and</p> <p>    “(b) Evidence of that person’s identity.</p> <p>“(4) Any Social Worker or officer who is carrying out an assessment under section 400 of this Act may at any time be accompanied by such other person or persons (including a registered medical practitioner) as may be necessary to carry out the assessment.”</p>

SECOND SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE  
BY SECTIONS 15 AND 43—*continued*

Provision of Principal Act	Amendment
Section 402 . . . . .	<p>By repealing this section, and substituting the following section:</p> <p><b>“402. Convener of Iwi Social Service or Cultural Social Service to have power of decision for purposes of this Act—</b>Where, pursuant to any provision of this Act, a child or young person is placed in the care or custody or under the guardianship of an Iwi Social Service or a Cultural Social Service, the Convener of that Social Service shall have and may exercise or carry out, on behalf of the Social Service, all rights, powers, and duties in respect of the child or young person that are conferred or imposed on the Social Service by virtue of this Act.”</p>